

Federal Communications Commission

§ 73.3564

radio stations in the relevant television metropolitan market and the number of television licensees within the relevant ADI television market based on the most recent Commission ownership records.

Other waiver requests will be evaluated on a more rigorous case-by-case basis, as set forth in the *Second Report and Order* in MM Docket No. 87-7, FCC 88-407, released February 23, 1989, and *Memorandum Opinion and Order* in MM Docket No. 87-7, FCC 89-256, released August 4, 1989.

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§ 73.3556 Duplication of programming on commonly owned or time brokered stations.

(a) No commercial AM or FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

(c) Any party engaged in a time brokerage arrangement which conflicts with the requirements of paragraph (a) of this section on September 16, 1992, shall bring that arrangement into compliance within one year thereafter.

[57 FR 18093, Apr. 29, 1992, as amended at 57 FR 42706, Sept. 16, 1992]

EFFECTIVE DATE NOTE: At 57 FR 18093, Apr. 29, 1992, § 73.3556 was added, effective August 1, 1992. At 57 FR 35763, Aug. 11, 1992, the effective date was deferred pending action by the agency. At 57 FR 37888, Aug. 21, 1992, the effective date was further deferred. At 57 FR 42706, Sept. 16, 1992, paragraph (a) was revised and paragraph (c) was added, effective September 16, 1992. The agency will publish a notice of the effective date of paragraph (b) in the FEDERAL REGISTER at a later date.

§ 73.3561 Staff consideration of applications requiring Commission action.

Upon acceptance of an application, the complete file is reviewed by the staff and, except where the application is acted upon by the staff pursuant to delegation of authority, a report containing the recommendations of the staff and any other documents required is prepared and placed on the Commission's agenda.

[44 FR 38499, July 2, 1979]

§ 73.3562 Staff consideration of applications not requiring action by the Commission.

Those applications which do not require action by the Commission but which, pursuant to the delegations of authority set forth in subpart B of part 0, may be acted upon by the Chief, Mass Media Bureau, are forwarded to the Mass Media Bureau for necessary action. If the application is granted, the formal authorization is issued. In any case where it is recommended that the application be set for hearing, where a novel question of policy is presented, or where the Chief, Mass Media Bureau desires instructions from the Commission, the matter is placed on the Commission agenda.

[49 FR 14509, Apr. 12, 1984]

§ 73.3564 Acceptance of applications.

(a)(1) Applications tendered for filing are dated upon receipt and then forwarded to the Mass Media Bureau, where an administrative examination is made to ascertain whether the applications are complete. Except for applications for minor modifications of facilities in the non-reserved FM band, as defined in § 73.3573(a)(2), long form applications subject to the provisions of § 73.5005 found to be complete or substantially complete are accepted for filing and are given file numbers. In the case of minor defects as to completeness, a deficiency letter will be issued and the applicant will be required to supply the missing or corrective information. Applications that are not substantially complete will not be considered and will be returned to the applicant.

(2) In the case of minor modifications of facilities in the non-reserved FM band, applications will be placed on public notice if they meet the following two-tiered minimum filing requirement as initially filed in first come/first served proceedings:

(i) The application must include:

- (A) Applicant's name and address,
- (B) Applicant's original signature,
- (C) Principal community,
- (D) Channel or frequency,
- (E) Class of station, and
- (F) Transmitter site coordinates; and

(ii) The application must not omit more than 3 of the second tier items specified in appendix C, Report and Order, MM Docket No. 91-347, FCC 92-328, 7 FCC Rcd 5074 (1992). Applications found not to meet minimum filing requirements will be returned to the applicant. Applications found to meet minimum filing requirements, but that contain deficiencies in tender and/or acceptance information, shall be given an opportunity for corrective amendment pursuant to § 73.3522. Applications found to be substantially complete and in accordance with the Commission's core legal and technical requirements will be accepted for filing. Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for corrective amendment.

(b) Acceptance of an application for filing merely means that it has been the subject of a preliminary review by the FCC's administrative staff as to completeness. Such acceptance will not preclude the subsequent dismissal of the application if it is found to be patently not in accordance with the FCC's rules.

(c) At regular intervals, the FCC will issue a Public Notice listing all long form applications which have been accepted for filing. Pursuant to §§ 73.3571(h), 73.3572, and 73.3573(f), such notice shall establish a cut-off date for the filing of petitions to deny. With respect to reserved band FM applications, the Public Notice shall also establish a cut-off date for the filing of mutually exclusive applications pursuant to § 73.3573(e). However, no application will be accepted for filing unless certification of compliance with the

local notice requirements of § 73.3580(h) has been made in the tendered application.

(d) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for new stations or for major modifications in the facilities of an existing station. Except for reserved band FM stations and TV stations on reserved noncommercial educational channels, applications for new and major modifications in facilities will be accepted only during these window filing periods specified by the Commission.

(e) Applications for minor modification of facilities may be tendered at any time, unless restricted by the FCC. These applications will be processed on a "first come/first served" basis and will be treated as simultaneously tendered if filed on the same day. Any applications received after the filing of a lead application will be grouped according to filing date, and placed in a queue behind the lead applicant. The FCC will periodically release a Public Notice listing those minor modification of facilities applications accepted for filing.

(f) If a non-reserved band FM channel allotment becomes vacant, after the grant of a construction permit becomes final, because of a lapsed construction permit or for any other reason, the FCC will, by Public Notice, announce a subsequent filing window for the acceptance of new applications for such channels.

(g) Applications for operation in the 1605–1705 kHz band will be accepted only if filed pursuant to the terms of § 73.30(b).

[63 FR 48624, Sept. 11, 1998]

§ 73.3566 Defective applications.

(a) Applications which are determined to be patently not in accordance with the FCC rules, regulations, or other requirements, unless accompanied by an appropriate request for waiver, will be considered defective and will not be accepted for filing or if inadvertently accepted for filing will be dismissed. Requests for waiver shall show the nature of the waiver or exception desired and shall set forth the reasons in support thereof.